

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

~~OPIN 12.10.05~~
~~OPIN 09.02.06~~
PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)
12.07.05

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

NO 767²100/PCT

International application No.
PCT/EP2005/001448

International filing date (day/month/year)
14.02.2005

Priority date (day/month/year)
09.04.2004

International Patent Classification (IPC) or both national classification and IPC
A21C15/00, A23G9/28

Applicant
NESTEC S.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☐ Box No. V Reasoned statement under Rule 43bis.1 (a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

Reference is made to the following documents:

D1: EP-A-0 350 352 (ESAL S A) 10 January 1990 (1990-01-10)

D2: EP-A-0 733 308 (NESTLE SA) 25 September 1996 (1996-09-25)

1 LACK OF INVENTIVE STEP

1.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.

1.2 The document D1 is regarded as being the closest prior art to the subject-matter of claim 1, and discloses:
process for preparing a container consisting of a wafer, said preparation being carried out prior to the filling of said container with a food product, the wall of said container extending between an outwardly open mouth zone and a narrower zone forming an outward end, in which process, in order to preserve the crunchy nature of the wafer, the container is arranged such that the closed, narrow end of the wafer forms the bottom tip of the container and the inner wall of the container is sprayed with a liquid coating agent, said coating agent being capable of solidifying rapidly in order to form a coating layer intended, after the food product has been placed in the container, to separate the wafer and the food product, said coating layer being provided in order, subsequently, to be consumed at the same time as the wafer and said food product, whereby the inside of the container is sprayed with an excess quantity of coating agent that is sufficient to guarantee that no coating-gap zone remains on the inner wall of the wafer that is to come into contact with the food product, the excess liquid coating agent collecting, under gravity, at the bottom tip of the container, and in that, prior to the solidification of said excess, the excess is *drained from* the container, subsequent solidification of the coating layer thus making it possible to establish a continuous barrier over the inner wall of the wafer.

- 1.3 The subject-matter of claim 1 therefore differs from this known process in that: the excess liquid coating agent is *sucked out* of the container.
- 1.4 The problem to be solved by the present invention may therefore be regarded as: to find an alternative way to remove the excess liquid coating agent from the container.
- 1.5 The solution proposed in claim 1 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the following reasons.
Removing the excess liquid coating agent from a coated container by suction is described in document D2 (see col. 5, line 29-42, and figs. 1-5) as providing the same advantages as in the present application. The skilled person would therefore regard it as a normal option to include this feature in the process described in document D1 in order to solve the problem posed.
- 1.6 The present application furthermore does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 11 does not involve an inventive step in the sense of Article 33(3) PCT.
- 1.7 The document D1 is regarded as being the closest prior art to the subject-matter of claim 11, and discloses (the references in parentheses applying to this document): an installation for implementing a process for coating the inner wall of a container, comprising, firstly, a conveyor (2) with discontinuous displacement in successive steps, said conveyor including elements on each of which at least one receptacle (13) is provided in order to receive a container (3) formed by a wafer, the wall of said container extending between an outwardly open mouth zone and a narrower zone forming an outwardly closed end, said container being arranged in a receptacle such that its closed end forms the bottom tip of the wafer and, secondly, a spray station (4) at which is arranged, in line with each container carried by a conveyor element that arrives opposite the spray station at a stop instant of said conveyor, a spray head (25) capable of spraying the inner wall of the wafer, and thirdly, a drain station at which means are arranged for draining the excess coating agent, said drain station being located downstream of the spray station in the direction of displacement of the conveyor.

- 1.8 The subject-matter of claim 11 therefore differs from this known installation in that:
- a) said spray head being able to be moved between a low position in which, in order to distribute the coating agent, the head is positioned in or in the vicinity of the mouth of the container, and a high position that allows the displacement of the conveyor, and
 - b) said drain station is a suction station on which is arranged, in line with each container carried by a conveyor element that arrives opposite the suction station at a stop instant of the conveyor, a suction pipette that includes, at its bottom end, at least one suction orifice, the suction pipette being able to move between a low position, in which its bottom end arrives in the vicinity of the bottom tip of the wafer, and a high position that allows the displacement of the conveyor.
- 1.9 The problem to be solved by the present invention may therefore be regarded as: how to guarantee that no coating-gap zone remains on the inner wall of the wafer that is to come into contact with the food product and, at the same time, to find an alternative way to remove the excess liquid coating agent from the container.
- 1.10 The solution proposed in claim 11 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the following reasons.
- The feature of the spray head being able to be moved between two positions has already been disclosed, in reversed position, in document D1 (see figure 2) for the same purpose. The skilled person would therefore regard it as a normal option to use such a spray head in a position described in claim 11.
- The feature of a suction pipette and its movement between two positions has already been disclosed for the same purpose in a similar installation, see document D2, col. 5, line 29-42, col. 6, line 19-26, figs. 1-4. It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply this feature with corresponding effect to an installation according to document D1, thereby arriving at an installation according to claim 11.
- Hence, no inventive step is present in the subject-matter of claim 11.

2 DEPENDENT CLAIMS 2, 7-10, 21-23

- 2.1 Dependent claims 2, 7-10, 21-23 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, see documents D1 and D2.

3 DEPENDENT CLAIMS 3-6, 12-20

- 3.1 The combination of the features of dependent claims 3-6, 12-20 is neither known from, nor rendered obvious by, the available prior art.

4 OTHER REMARKS

- 4.1 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D2 is not mentioned in the description, nor are these documents identified therein.